TCPA Q & A - Answers to Frequently Asked Questions

Prepared by the Bureau of Chemical Release Information and Prevention, Department of Environmental Protection, October 13, 1998

Question 1:

Q – Can an owner or operator (o/o) with an approved risk management (RM) program comply with some of the new Toxic Catastrophe Prevention Act (TCPA) rule requirements before his entire approved RM program has been updated to comply with the new rule?

A – Yes. From now until June 21, 1999, the date by which all o/o must be in compliance with the new TCPA rules, an approved RM program may be changed in steps. During the transition period, the o/o must comply with the requirements of the approved RM program until he changes a specific portion of the RM program. Until June 21, 1999, it is possible for an o/o to be complying with some requirements of the TCPA rule published on July 20, 1998 and some of the requirements of the expired rule.

Question 2:

Q – How does an o/o with an approved RM program advise the Department about whether he is complying with the expired rule or the new rule?

A – The new rule requires an o/o with an approved RM program to comply with that approved RM program until the program is updated to reflect the new rule requirements, which must be by June 21, 1999. Until that date, the Department will learn of updates made to the approved RM program in one of two ways: by review of the annual report or by inspecting the program documents during a site visit. An annual report must include a description of significant changes made to the management system. Any RM program changes must also be reflected in updated documents kept on site for review by the Department during an audit or inspection.

Question 3:

Q – How does an o/o with an approved RM program advise the Department of registration changes?

A – Until EPA finalizes its RMP* Submit program, which is expected to be made available for use by January 4, 1999 (the New Jersey addition of the RMP*Submit may not be available from EPA until March, 1999), an o/o with an approved RM program may advise the Department of registration changes by submitting the previously used TCPA registration form (STP-010, 9/94). If more space is required to describe the change, additional paper may be sent with the form.

Question 4:

Q – When and how can an o/o with an approved RM program assign Program 2 status to

one or more of his covered processes to take advantage of the new TCPA rule?

A – An o/o may assign Program 2 status to his eligible covered processes at any time after July 20, 1998.

Question 5:

Q – I have a storage area of shipping containers. Each container holds more than the threshold quantity of an EHS. A single container is removed from storage and connected to process equipment where the EHS is consumed. Am I allowed to consider the storage area and the process equipment to be a single covered process?

A – Yes, but ONLY if the two areas together meet EPA's definition of a covered process. Under EPA's definition of "process," separated vessels at two locations may be one process if regulated substances could be released at both locations during a single release event, including an event that is external to both vessels. The o/o should be able to document the basis for the decision that individual vessels at separate locations do or do not constitute a single process.

Question 6:

Q – If a container holding a threshold quantity is moved from a covered process storage area to process equipment where it is consumed, is the EHS counted as inventory in both processes?

A – Yes, the rule and the RMP Submit require registration based on the maximum quantity of the EHS present at each covered process.

Question 7:

Q – By what date must an o/o of a newly regulated covered process conduct a compliance audit of his TCPA program?

A – An o/o of a newly regulated covered process shall conduct a compliance audit no later than June 21, 2000 for that Program 3 covered process or no later than June 21, 2002 for a Program 2 covered process. If the o/o is already covered under TCPA or OSHA, the dates of the last audits performed under these programs may be used as base dates rather than June 21, 1999.

Question 8:

Q – When must an o/o of a regulated source update a Process Hazard Analysis to include risk assessment under the provisions of the TCPA rule if that source is not currently regulated under TCPA but is compliant with OSHA PSM (29 CFR 1910.119) requirements?

A – The updated PHA, including risk assessment, is due 5 years from the date of the last PHA performed under OSHA PSM.

Question 9:

Q – How should an o/o with a covered process that qualifies for Program 1 status under

the federal program, register that process with DEP and EPA?

A – Since New Jersey did not incorporate Program 1 requirements into the TCPA rule, the o/o must submit two versions of the RMP for this covered process: one to EPA claiming Program 1 status and a second to DEP claiming Program 2 or Program 3 status in accordance with the criteria for determining program status specified at 40 CFR68.10(d).

Question 10:

Q – As a current TCPA registrant with an approved RM program, I find that I have EPA regulated substances (such as propane) not regulated under TCPA as well as EHS's that are not regulated by EPA and some toxic and flammable substances regulated under both TCPA and the federal program. How do I register with EPA and DEP?

A – You must submit two risk management plans: one to EPA for all federally regulated substances and one to DEP for those substances included in the TCPA EHS list at N.J.A.C. 7:31-6.3 (which excludes the components of liquefied petroleum gas). Both RMPs must be submitted prior to June 21, 1999, preferably on the same date.

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